

AMENDED IN ASSEMBLY JULY 8, 2003

AMENDED IN SENATE MAY 21, 2003

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 752

Introduced by Senator Alpert

February 21, 2003

An act to amend Sections 853.5 and 853.6 of the Penal Code, and to amend Sections 40303, 40305, 40305.5, 40500, and 40504 of the Vehicle Code, relating to identification.

LEGISLATIVE COUNSEL'S DIGEST

SB 752, as amended, Alpert. Identification.

Under existing law, in any case in which a person is arrested for an offense declared to be an infraction or a misdemeanor, including a violation of any city or county ordinance or a violation of the Vehicle Code, the person may be released pursuant to specified procedures that include presenting to a peace officer satisfactory identification or signing a promise or notice to appear. Existing law also authorizes a peace officer to obtain a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on a promise to appear from the person arrested for an infraction if that person does not provide satisfactory evidence of identity, or when the person is arrested for a misdemeanor and he or she has no satisfactory identification. Existing law provides that this thumbprint or fingerprint shall not be used to create a database.

This bill would add that the print could not be included in a database or otherwise distributed for any except law enforcement purposes relating to the identity of the arrestee.

Existing law provides that a person reasonably believing he or she is a victim of identity theft may petition the court for a factual finding of innocence, which shall be granted if there is no reasonable cause to believe that person committed the associated offense, as specified.

This bill would provide that a person contesting a charge by claiming under penalty of perjury not to be the person issued a notice to appear under the circumstances described above may choose to submit a print to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. This bill would ~~permit~~ *authorize* for a local law enforcement agency providing this service to charge the requester no more than the actual costs.

By permitting this contest of a charge by a person claiming innocence under penalty of perjury who chooses to submit prints to local law enforcement agencies, this bill would expand the crime of perjury requiring additional prosecution resources, and require print handling and processing duties by local agencies, thereby imposing a state-mandated local program.

The bill would also specify procedures by which the court would determine the result of the contest, including providing for a finding of factual innocence under certain circumstances and for a referral of that finding to the Department of Motor Vehicles for specified purposes.

It would specify that the citation or notice to appear may be held *by the prosecuting attorney or issuing agency* for future adjudication should the arrestee who received the citation or notice to appear be found.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:



1 It is the intent of the Legislature to provide a method for victims
2 of identity theft to quickly clear their names when an arrestee uses
3 a false name.

4 Police officers should endeavor to obtain satisfactory
5 identification from those arrested who cannot show proper
6 identification, including a thumbprint or a photograph, unless the
7 officer is called away on an emergency or the officer deems it
8 unsafe or otherwise impractical to obtain a thumbprint. In cases
9 where no thumbprint is obtained, officers should explain the
10 circumstances that made obtaining a thumbprint unsafe or
11 impractical.

12 If a police officer does not obtain a thumbprint from those
13 arrested who cannot show proper identification, and if the person
14 contesting the charge claims under penalty of perjury not to be the
15 person issued the notice to appear, the courts should refer these
16 cases back to local law enforcement for further investigation.

17 Law enforcement agencies and the courts are encouraged to
18 track their expenses relating to notices to appear closely, in order
19 to determine whether obtaining thumbprints on those notices to
20 appear where arrestees cannot show proper identification is in fact
21 more cost effective than researching the cases that are referred
22 back to law enforcement for further investigation.

23 SEC. 2. Section 853.5 of the Penal Code is amended to read:

24 853.5. (a) Except as otherwise provided by law, in any case
25 in which a person is arrested for an offense declared to be an
26 infraction, the person may be released according to the procedures
27 set forth by this chapter for the release of persons arrested for an
28 offense declared to be a misdemeanor. In all cases, except as
29 specified in Sections 40302, 40303, 40305, and 40305.5 of the
30 Vehicle Code, in which a person is arrested for an infraction, a
31 peace officer shall only require the arrestee to present his or her
32 driver's license or other satisfactory evidence of his or her identity
33 for examination and to sign a written promise to appear contained
34 in a notice to appear. If the arrestee does not have a driver's license
35 or other satisfactory evidence of identity in his or her possession,
36 the officer may require the arrestee to place a right thumbprint, or
37 a left thumbprint or fingerprint if the person has a missing or
38 disfigured right thumb, on the notice to appear. Except for law
39 enforcement purposes relating to the identity of the arrestee, no
40 person or entity may sell, give away, allow the distribution of,

1 include in a database, or create a database with, this print. Only if
2 the arrestee refuses to sign a written promise, has no satisfactory
3 identification, or refuses to provide a thumbprint or fingerprint
4 may the arrestee be taken into custody.

5 (b) A person contesting a charge by claiming under penalty of
6 perjury not to be the person issued the notice to appear may choose
7 to submit a right thumbprint, or a left thumbprint if the person has
8 a missing or disfigured right thumb, to the issuing court through
9 his or her local law enforcement agency for comparison with the
10 one placed on the notice to appear. A local law enforcement agency
11 providing this service may charge the requester no more than the
12 actual costs. *The issuing court may refer the thumbprint submitted*
13 *and the notice to appear to the prosecuting attorney for*
14 *comparison of the thumbprints.* When there is no thumbprint or
15 fingerprint on the notice to appear, or when the comparison of
16 thumbprints is inconclusive, the court shall refer the notice to
17 appear or copy thereof back to the issuing agency for further
18 investigation, unless the court finds that referral is not in the
19 interest of justice.

20 (c) Upon initiation of the investigation *or comparison* process
21 *by referral of the court*, the court shall continue the case and the
22 speedy trial period shall be tolled for 45 days.

23 (d) Upon receipt of the issuing agency's *or prosecuting*
24 *agency's* response, the court may make a finding of factual
25 innocence pursuant to Section 530.6 if the court determines that
26 there is insufficient evidence that the person cited is the person
27 charged and shall immediately notify the Department of Motor
28 Vehicles of its determination. If the Department of Motor Vehicles
29 determines the citation or citations in question formed the basis of
30 a suspension or revocation of the person's driving privilege, the
31 department shall immediately set aside the action.

32 (e) If the *prosecuting attorney or* issuing agency fails to
33 *respond to a court referral* within 45 days, the court shall make a
34 finding of factual innocence pursuant to Section 530.6, unless the
35 court finds that a finding of factual innocence is not in the interest
36 of justice.

37 SEC. 3. Section 853.6 of the Penal Code is amended to read:

38 853.6. (a) In any case in which a person is arrested for an
39 offense declared to be a misdemeanor, including a violation of any
40 city or county ordinance, and does not demand to be taken before

1 a magistrate, that person shall, instead of being taken before a
2 magistrate, be released according to the procedures set forth by this
3 chapter. If the person is released, the officer or his or her superior
4 shall prepare in duplicate a written notice to appear in court,
5 containing the name and address of the person, the offense
6 charged, and the time when, and place where, the person shall
7 appear in court. If, pursuant to subdivision (i), the person is not
8 released prior to being booked and the officer in charge of the
9 booking or his or her superior determines that the person should
10 be released, the officer or his or her superior shall prepare a written
11 notice to appear in a court.

12 In any case in which a person is arrested for a misdemeanor
13 violation of a protective court order involving domestic violence,
14 as defined in subdivision (b) of Section 13700, or arrested pursuant
15 to a policy, as described in Section 13701, the person shall be taken
16 before a magistrate instead of being released according to the
17 procedures set forth in this chapter, unless the arresting officer
18 determines that there is not a reasonable likelihood that the offense
19 will continue or resume or that the safety of persons or property
20 would be imminently endangered by release of the person arrested.
21 Prior to adopting these provisions, each city, county, or city and
22 county shall develop a protocol to assist officers to determine when
23 arrest and release is appropriate, rather than taking the arrested
24 person before a magistrate. The county shall establish a committee
25 to develop the protocol, consisting of, at a minimum, the police
26 chief or county sheriff within the jurisdiction, the district attorney,
27 county counsel, city attorney, representatives from domestic
28 violence shelters, domestic violence councils, and other relevant
29 community agencies.

30 Nothing in this subdivision shall be construed to affect a
31 defendant's ability to be released on bail or on his or her own
32 recognizance.

33 (b) Unless waived by the person, the time specified in the notice
34 to appear shall be at least 10 days after arrest if the duplicate notice
35 is to be filed by the officer with the magistrate.

36 (c) The place specified in the notice shall be the court of the
37 magistrate before whom the person would be taken if the
38 requirement of taking an arrested person before a magistrate were
39 complied with, or shall be an officer authorized by that court to
40 receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice which shall be retained by the officer, and the officer may require the arrested person, if he or she has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an infraction.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

If the duplicate notice is filed with the prosecuting attorney, he or she, within his or her discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified in the duplicate notice within 25 days from the time of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the misdemeanor charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail that in his or her judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by him or her in the form set

1 forth in Section 815a. The defendant may, prior to the date upon
2 which he or she promised to appear in court, deposit with the
3 magistrate the amount of bail set by the magistrate. At the time the
4 case is called for arraignment before the magistrate, if the
5 defendant does not appear, either in person or by counsel, the
6 magistrate may declare the bail forfeited, and may, in his or her
7 discretion, order that no further proceedings shall be had in the
8 case, unless the defendant has been charged with a violation of
9 Section 374.3 or 374.7 of this code or of Section 11357, 11360, or
10 13002 of the Health and Safety Code, or a violation punishable
11 under Section 5008.7 of the Public Resources Code, and he or she
12 has previously been convicted of a violation of that section or a
13 violation that is punishable under that section, except in cases
14 where the magistrate finds that undue hardship will be imposed
15 upon the defendant by requiring him or her to appear, the
16 magistrate may declare the bail forfeited and order that no further
17 proceedings be had in the case.

18 Upon the making of the order that no further proceedings be
19 had, all sums deposited as bail shall immediately be paid into the
20 county treasury for distribution pursuant to Section 1463.

21 (f) No warrant shall be issued for the arrest of a person who has
22 given a written promise to appear in court, unless and until he or
23 she has violated that promise or has failed to deposit bail, to appear
24 for arraignment, trial, or judgment or to comply with the terms and
25 provisions of the judgment, as required by law.

26 (g) The officer may book the arrested person prior to release or
27 indicate on the citation that the arrested person shall appear at the
28 arresting agency to be booked or indicate on the citation that the
29 arrested person shall appear at the arresting agency to be
30 fingerprinted prior to the date the arrested person appears in court.
31 If it is indicated on the citation that the arrested person shall be
32 booked or fingerprinted prior to the date of the person's court
33 appearance, the arresting agency at the time of booking or
34 fingerprinting shall provide the arrested person with verification
35 of the booking or fingerprinting by either making an entry on the
36 citation or providing the arrested person a verification form
37 established by the arresting agency. If it is indicated on the citation
38 that the arrested person is to be booked or fingerprinted, the
39 magistrate, judge, or court shall, before the proceedings begin,
40 order the defendant to provide verification that he or she was



1 booked or fingerprinted by the arresting agency. If the defendant
2 cannot produce the verification, the magistrate, judge, or court
3 shall require that the defendant be booked or fingerprinted by the
4 arresting agency before the next court appearance, and that the
5 defendant provide the verification at the next court appearance
6 unless both parties stipulate that booking or fingerprinting is not
7 necessary.

8 (h) A peace officer shall use the written notice to appear
9 procedure set forth in this section for any misdemeanor offense in
10 which the officer has arrested a person without a warrant pursuant
11 to Section 836 or in which he or she has taken custody of a person
12 pursuant to Section 847.

13 (i) Whenever any person is arrested by a peace officer for a
14 misdemeanor, that person shall be released according to the
15 procedures set forth by this chapter unless one of the following is
16 a reason for nonrelease, in which case the arresting officer may
17 release the person, or the arresting officer shall indicate, on a form
18 to be established by his or her employing law enforcement agency,
19 which of the following was a reason for the nonrelease:

20 (1) The person arrested was so intoxicated that he or she could
21 have been a danger to himself or herself or to others.

22 (2) The person arrested required medical examination or
23 medical care or was otherwise unable to care for his or her own
24 safety.

25 (3) The person was arrested under one or more of the
26 circumstances listed in Sections 40302 and 40303 of the Vehicle
27 Code.

28 (4) There were one or more outstanding arrest warrants for the
29 person.

30 (5) The person could not provide satisfactory evidence of
31 personal identification.

32 (6) The prosecution of the offense or offenses for which the
33 person was arrested, or the prosecution of any other offense or
34 offenses, would be jeopardized by immediate release of the person
35 arrested.

36 (7) There was a reasonable likelihood that the offense or
37 offenses would continue or resume, or that the safety of persons or
38 property would be imminently endangered by release of the person
39 arrested.

1 (8) The person arrested demanded to be taken before a
2 magistrate or refused to sign the notice to appear.

3 (9) There is reason to believe that the person would not appear
4 at the time and place specified in the notice. The basis for this
5 determination shall be specifically stated.

6 The form shall be filed with the arresting agency as soon as
7 practicable and shall be made available to any party having
8 custody of the arrested person, subsequent to the arresting officer,
9 and to any person authorized by law to release him or her from
10 custody before trial.

11 (j) Once the arresting officer has prepared the written notice to
12 appear and has delivered a copy to the person arrested, the officer
13 shall deliver the remaining original and all copies as provided by
14 subdivision (e).

15 Any person, including the arresting officer and any member of
16 the officer's department or agency, or any peace officer, who
17 alters, conceals, modifies, nullifies, or destroys, or causes to be
18 altered, concealed, modified, nullified, or destroyed, the face side
19 of the remaining original or any copy of a citation that was retained
20 by the officer, for any reason, before it is filed with the magistrate
21 or with a person authorized by the magistrate to receive deposit of
22 bail, is guilty of a misdemeanor.

23 If, after an arrested person has signed and received a copy of a
24 notice to appear, the arresting officer determines that, in the
25 interest of justice, the citation or notice should be dismissed, the
26 arresting agency may recommend, in writing, to the magistrate
27 that the charges be dismissed. The recommendation shall cite the
28 reasons for the recommendation and shall be filed with the court.

29 If the magistrate makes a finding that there are grounds for
30 dismissal, the finding shall be entered in the record and the charges
31 dismissed.

32 Under no circumstances shall a personal relationship with any
33 officer, public official, or law enforcement agency be grounds for
34 dismissal.

35 (k) (1) A person contesting a charge by claiming under penalty
36 of perjury not to be the person issued the notice to appear may
37 choose to submit a right thumbprint, or a left thumbprint if the
38 person has a missing or disfigured right thumb, to the issuing court
39 through his or her local law enforcement agency for comparison
40 with the one placed on the notice to appear. A local law

1 enforcement agency providing this service may charge the
2 requester no more than the actual costs. *The issuing court may refer*
3 *the thumbprint submitted and the notice to appear to the*
4 *prosecuting attorney for comparison of the thumbprints.* When
5 there is no thumbprint or fingerprint on the notice to appear, or
6 when the comparison of thumbprints is inconclusive, the court
7 shall refer the notice to appear or copy thereof back to the issuing
8 agency for further investigation, unless the court finds that referral
9 is not in the interest of justice.

10 (2) Upon initiation of the investigation *or comparison* process
11 *by referral of the court*, the court shall continue the case and the
12 speedy trial period shall be tolled for 45 days.

13 (3) Upon receipt of the issuing agency's *or prosecuting*
14 *attorney's* response, the court may make a finding of factual
15 innocence pursuant to Section 530.6 if the court determines that
16 there is insufficient evidence that the person cited is the person
17 charged and shall immediately notify the Department of Motor
18 Vehicles of its determination. If the Department of Motor Vehicles
19 determines the citation or citations in question formed the basis of
20 a suspension or revocation of the person's driving privilege, the
21 department shall immediately set aside the action.

22 (4) If the *prosecuting attorney or* issuing agency fails to
23 respond *to a court referral* within 45 days, the court shall make a
24 finding of factual innocence pursuant to Section 530.6, unless the
25 court finds that a finding of factual innocence is not in the interest
26 of justice.

27 (5) The citation or notice to appear may be held *by the*
28 *prosecuting attorney or issuing agency* for future adjudication
29 should the arrestee who received the citation or notice to appear be
30 found.

31 (l) For purposes of this section, the term "arresting agency"
32 includes any other agency designated by the arresting agency to
33 provide booking or fingerprinting services.

34 SEC. 4. Section 40303 of the Vehicle Code is amended to
35 read:

36 40303. (a) Whenever any person is arrested for any of the
37 offenses listed in subdivision (b) and the arresting officer is not
38 required to take the person without unnecessary delay before a
39 magistrate, the arrested person shall, in the judgment of the
40 arresting officer, either be given a 10 days' notice to appear, or be

1 taken without unnecessary delay before a magistrate within the
 2 county in which the offense charged is alleged to have been
 3 committed and who has jurisdiction of the offense and is nearest
 4 or most accessible with reference to the place where the arrest is
 5 made. The officer may require that the arrested person, if he or she
 6 has no satisfactory identification, place a right thumbprint, or a left
 7 thumbprint or fingerprint if the person has a missing or disfigured
 8 right thumb, on the 10 days' notice to appear when a 10 days'
 9 notice is provided. Except for law enforcement purposes relating
 10 to the identity of the arrestee, no person or entity may sell, give
 11 away, allow the distribution of, include in a database, or create a
 12 database with, this print.

13 (b) Subdivision (a) applies to the following offenses:

14 (1) Section 10852 or 10853, relating to injuring or tampering
 15 with a vehicle.

16 (2) Section 23103 or 23104, relating to reckless driving.

17 (3) Subdivision (a) of Section 2800, insofar as it relates to a
 18 failure or refusal of the driver of a vehicle to stop and submit to an
 19 inspection or test of the lights upon the vehicle under Section 2804
 20 hereof, which is punishable as a misdemeanor.

21 (4) Subdivision (a) of Section 2800, insofar as it relates to a
 22 failure or refusal of the driver of a vehicle to stop and submit to a
 23 brake test which is punishable as a misdemeanor.

24 (5) Subdivision (a) of Section 2800, relating to the refusal to
 25 submit vehicle and load to an inspection, measurement, or
 26 weighing as prescribed in Section 2802 or a refusal to adjust the
 27 load or obtain a permit as prescribed in Section 2803.

28 (6) Subdivision (a) of Section 2800, insofar as it relates to any
 29 driver who continues to drive after being lawfully ordered not to
 30 drive by a member of the California Highway Patrol for violating
 31 the driver's hours of service or driver's log regulations adopted
 32 pursuant to subdivision (a) of Section 34501.

33 (7) Subdivision (b) of Section 2800, relating to a failure or
 34 refusal to comply with any lawful out-of-service order.

35 (8) Section 20002 or 20003, relating to duties in the event of an
 36 accident.

37 (9) Section 23109, relating to participating in speed contests or
 38 exhibition of speed.

39 (10) Section 14601, 14601.1, 14601.2, or 14601.5, relating to
 40 driving while license is suspended or revoked.

1 (11) When the person arrested has attempted to evade arrest.

2 (12) Section 23332, relating to persons upon vehicular
3 crossings.

4 (13) Section 2813, relating to the refusal to stop and submit a
5 vehicle to an inspection of its size, weight, and equipment.

6 (14) Section 21461.5, insofar as it relates to a pedestrian who,
7 after being cited for a violation of Section 21461.5, is, within 24
8 hours, again found upon the freeway in violation of Section
9 21461.5 and thereafter refuses to leave the freeway after being
10 lawfully ordered to do so by a peace officer and after having been
11 informed that his or her failure to leave could result in his or her
12 arrest.

13 (15) Subdivision (a) of Section 2800, insofar as it relates to a
14 pedestrian who, after having been cited for a violation of
15 subdivision (a) of Section 2800 for failure to obey a lawful order
16 of a peace officer issued pursuant to Section 21962, is within 24
17 hours again found upon the bridge or overpass and thereafter
18 refuses to leave after being lawfully ordered to do so by a peace
19 officer and after having been informed that his or her failure to
20 leave could result in his or her arrest.

21 (16) Section 21200.5, relating to riding a bicycle while under
22 the influence of an alcoholic beverage or any drug.

23 (17) Section 21221.5, relating to operating a motorized scooter
24 while under the influence of an alcoholic beverage or any drug.

25 (c) (1) A person contesting a charge by claiming under penalty
26 of perjury not to be the person issued the notice to appear may
27 choose to submit a right thumbprint, or a left thumbprint if the
28 person has a missing or disfigured right thumb, to the issuing court
29 through his or her local law enforcement agency for comparison
30 with the one placed on the notice to appear. A local law
31 enforcement agency providing this service may charge the
32 requester no more than the actual costs. *The issuing court may refer*
33 *the thumbprint submitted and the notice to appear to the*
34 *prosecuting attorney for comparison of the thumbprints.* When
35 there is no thumbprint or fingerprint on the notice to appear, or
36 when the comparison of thumbprints is inconclusive, the court
37 shall refer the notice to appear or copy thereof back to the issuing
38 agency for further investigation, unless the court finds that referral
39 is not in the interest of justice.



1 (2) Upon initiation of the investigation *or comparison* process
2 *by referral of the court*, the court shall continue the case and the
3 speedy trial period shall be tolled for 45 days.

4 (3) Upon receipt of the issuing agency's *or prosecuting*
5 *attorney's* response, the court may make a finding of factual
6 innocence pursuant to Section 530.6 of the Penal Code if the court
7 determines that there is insufficient evidence that the person cited
8 is the person charged and shall immediately notify the Department
9 of Motor Vehicles of its determination. If the Department of Motor
10 Vehicles determines the citation or citations in question formed the
11 basis of a suspension or revocation of the person's driving
12 privilege, the department shall immediately set aside the action.

13 (4) If the *prosecuting attorney or* issuing agency fails to
14 respond *to a court referral* within 45 days, the court shall make a
15 finding of factual innocence pursuant to Section 530.6 of the Penal
16 Code, unless the court finds that a finding of factual innocence is
17 not in the interest of justice.

18 (5) The citation or notice to appear may be held *by the*
19 *prosecuting attorney or issuing agency* for future adjudication
20 should the arrestee who received the citation or notice to appear be
21 found.

22 SEC. 5. Section 40305 of the Vehicle Code is amended to
23 read:

24 40305. (a) Whenever a nonresident is arrested for violating
25 any section of this code while driving a motor vehicle and does not
26 furnish satisfactory evidence of identity and an address within this
27 state at which he or she can be located, he or she may, in the
28 discretion of the arresting officer, be taken immediately before a
29 magistrate within the county where the offense charged is alleged
30 to have been committed, and who has jurisdiction over the offense
31 and is nearest or most accessible with reference to the place where
32 the arrest is made. If the magistrate is not available at the time of
33 the arrest and the arrested person is not taken before any other
34 person authorized to receive a deposit of bail, and if the arresting
35 officer does not have the authority or is not required to take the
36 arrested person before a magistrate or other person authorized to
37 receive a deposit of bail by some other provision of law, the officer
38 may require the arrested person, if he or she has no satisfactory
39 identification, to place a right thumbprint, or a left thumbprint or
40 fingerprint if the person has a missing or disfigured right thumb,

1 on the notice to appear as provided in Article 2 (commencing with
2 Section 40500).

3 Except for law enforcement purposes relating to the identity of
4 the arrestee, no person or entity may sell, give away, allow the
5 distribution of, include in a database, or create a database with, this
6 print.

7 (b) (1) A person contesting a charge by claiming under penalty
8 of perjury not to be the person issued the notice to appear may
9 choose to submit a right thumbprint, or a left thumbprint if the
10 person has a missing or disfigured right thumb, to the issuing court
11 through his or her local law enforcement agency for comparison
12 with the one placed on the notice to appear. A local law
13 enforcement agency providing this service may charge the
14 requester no more than the actual costs. *The issuing court may refer*
15 *the thumbprint submitted and the notice to appear to the*
16 *prosecuting attorney for comparison of the thumbprints.* When
17 there is no thumbprint or fingerprint on the notice to appear, or
18 when the comparison of thumbprints is inconclusive, the court
19 shall refer the notice to appear or copy thereof back to the issuing
20 agency for further investigation, unless the court finds that referral
21 is not in the interest of justice.

22 (2) Upon initiation of the investigation *or comparison* process
23 *by referral of the court*, the court shall continue the case and the
24 speedy trial period shall be tolled for 45 days.

25 (3) Upon receipt of the issuing agency's *or prosecuting*
26 *attorney's* response, the court may make a finding of factual
27 innocence pursuant to Section 530.6 of the Penal Code if the court
28 determines that there is insufficient evidence that the person cited
29 is the person charged and shall immediately notify the Department
30 of Motor Vehicles of its determination. If the Department of Motor
31 Vehicles determines the citation or citations in question formed the
32 basis of a suspension or revocation of the person's driving
33 privilege, the department shall immediately set aside the action.

34 (4) If the *prosecuting attorney or* issuing agency fails to
35 respond *to a court referral* within 45 days, the court shall make a
36 finding of factual innocence pursuant to Section 530.6 of the Penal
37 Code, unless the court determines that a finding of factual
38 innocence is not in the interest of justice.

39 (5) The citation or notice to appear may be held *by the*
40 *prosecuting attorney or issuing agency* for future adjudication

1 should the arrestee who received the citation or notice to appear be
2 found.

3 SEC. 6. Section 40305.5 of the Vehicle Code is amended to
4 read:

5 40305.5. (a) Whenever a nonresident is arrested for violating
6 any section of this code while driving a commercially registered
7 motor vehicle, excluding house cars, with an unladen weight of
8 7,000 pounds or more, and does not furnish satisfactory evidence
9 of identity and an address within this state at which he or she can
10 be located, the arresting officer may, in lieu of the procedures set
11 forth in Section 40305, accept a guaranteed traffic arrest bail bond
12 certificate, and the nonresident shall be released from custody
13 upon giving a written promise to appear as provided in Article 2
14 (commencing with Section 40500). The officer may require the
15 arrested person, if he or she has no satisfactory identification, to
16 place a right thumbprint, or a left thumbprint or fingerprint if the
17 person has a missing or disfigured right thumb, on the notice to
18 appear as provided in Article 2 (commencing with Section 45000).
19 Except for law enforcement purposes relating to the identity of the
20 arrestee, no person or entity may sell, give away, allow the
21 distribution of, include in a database, or create a database with, this
22 print.

23 (b) Every guaranteed traffic arrest bail bond certificate shall
24 contain all of the following information:

25 (1) The name and address of the surety and of the issuer, if other
26 than the surety.

27 (2) The name, address, driver's license number and signature
28 of the individual covered by the certificate.

29 (3) The maximum amount guaranteed.

30 (4) Exclusions from coverage.

31 (5) A statement that the issuing company guarantees the
32 appearance of a person to whom a guaranteed traffic arrest bail
33 bond certificate is issued and, in the event of failure of the person
34 to appear in court at the time of trial, the issuing company shall pay
35 any fine or forfeiture imposed on the person, not to exceed the
36 amount stated on the certificate.

37 (6) The expiration date of the certificate.

38 (c) A guaranteed traffic arrest bail bond certificate may be
39 issued by a surety admitted in this state. The certificate may also

1 be issued by an association of motor carriers if all of the following
2 conditions are met:

3 (1) The association is incorporated, or authorized to do
4 business, in this state.

5 (2) The association is covered by a guaranteed traffic arrest bail
6 bond issued by a surety admitted in this state.

7 (3) The association agrees to pay fines or bail assessed against
8 the guaranteed traffic arrest bail bond certificate.

9 (4) The surety guarantees payment of fines or bail assessed
10 against the guaranteed traffic arrest bail bond certificates issued by
11 the association.

12 (d) The arresting officer shall file the guaranteed traffic arrest
13 bail bond certificate with the notice to appear required to be filed
14 by Section 40506.

15 (e) A “guaranteed traffic arrest bail bond certificate” is a
16 document which guarantees the payment of fines or bail assessed
17 against an individual for violation of this code, except driving
18 while under the influence of alcohol or drugs, driving without a
19 license or driving with a suspended or revoked license, operating
20 a motor vehicle without the permission of the owner, or any
21 violation punishable as a felony.

22 (f) A “guaranteed traffic arrest bail bond” is a bond issued by
23 a surety guaranteeing the obligations of the issuer of guaranteed
24 traffic arrest bail bond certificates. The bond shall be in the amount
25 of fifty thousand dollars (\$50,000) and shall be filed with the
26 Secretary of State. Any court in this state may assess against the
27 surety the amount of covered fines or bail which the issuer of a
28 guaranteed traffic arrest bail bond certificate fails to pay.

29 (g) (1) A person contesting a charge by claiming under penalty
30 of perjury not to be the person issued the notice to appear may
31 choose to submit a right thumbprint, or a left thumbprint if the
32 person has a missing or disfigured right thumb, to the issuing court
33 through his or her local law enforcement agency for comparison
34 with the one placed on the notice to appear. A local law
35 enforcement agency providing this service may charge the
36 requester no more than the actual costs. *The issuing court may refer*
37 *the thumbprint submitted and the notice to appear to the*
38 *prosecuting attorney for comparison of the thumbprints.* When
39 there is no thumbprint or fingerprint on the notice to appear, or
40 when the comparison of thumbprints is inconclusive, the court

1 shall refer the notice to appear or copy thereof back to the issuing
2 agency for further investigation, unless the court finds that referral
3 is not in the interest of justice.

4 (2) Upon initiation of the investigation *or comparison* process
5 *by referral of the court*, the court shall continue the case and the
6 speedy trial period shall be tolled for 45 days.

7 (3) Upon receipt of the issuing agency's *or prosecuting*
8 *attorney's* response, the court may make a finding of factual
9 innocence pursuant to Section 530.6 of the Penal Code if the court
10 determines that there is insufficient evidence that the person cited
11 is the person charged and shall immediately notify the Department
12 of Motor Vehicles of its determination. If the Department of Motor
13 Vehicles determines the citation or citations in question formed the
14 basis of a suspension or revocation of the person's driving
15 privilege, the department shall immediately set aside the action.

16 (4) If the *prosecuting attorney or* issuing agency fails to
17 respond *to a court referral* within 45 days, the court shall make a
18 finding of factual innocence pursuant to Section 530.6 of the Penal
19 Code, unless the court determines that a finding of factual
20 innocence is not in the interest of justice.

21 (5) The citation or notice to appear may be held *by the*
22 *prosecuting attorney or issuing agency* for future adjudication
23 should the arrestee who received the citation or notice to appear be
24 found.

25 SEC. 7. Section 40500 of the Vehicle Code is amended to
26 read:

27 40500. (a) Whenever a person is arrested for any violation of
28 this code not declared to be a felony, or for a violation of an
29 ordinance of a city or county relating to traffic offenses and he *or*
30 *she* is not immediately taken before a magistrate, as provided in
31 this chapter, the arresting officer shall prepare in triplicate a
32 written notice to appear in court or before a person authorized to
33 receive a deposit of bail, containing the name and address of the
34 person, the license number of his or her vehicle, if any, the name
35 and address, when available, of the registered owner or lessee of
36 the vehicle, the offense charged and the time and place when and
37 where he or she shall appear. If the arrestee does not have a driver's
38 license or other satisfactory evidence of identity in his or her
39 possession, the officer may require the arrestee to place a right
40 thumbprint, or a left thumbprint or fingerprint if the person has a

1 missing or disfigured right thumb, on the notice to appear. Except
2 for law enforcement purposes relating to the identity of the
3 arrestee, no person or entity may sell, give away, allow the
4 distribution of, include in a database, or create a database with, this
5 print.

6 (b) The Judicial Council shall prescribe the form of the notice
7 to appear.

8 (c) Nothing in this section requires the law enforcement agency
9 or the arresting officer issuing the notice to appear to inform any
10 person arrested pursuant to this section of the amount of bail
11 required to be deposited for the offense charged.

12 (d) Once the arresting officer has prepared the written notice to
13 appear, and has delivered a copy to the arrested person, the officer
14 shall deliver the remaining original and all copies of the notice to
15 appear as provided by Section 40506.

16 Any person, including the arresting officer and any member of
17 the officer's department or agency, or any peace officer, who
18 alters, conceals, modifies, nullifies, or destroys, or causes to be
19 altered, concealed, modified, nullified, or destroyed, the face side
20 of the remaining original or any copy of a citation that was retained
21 by the officer, for any reason, before it is filed with the magistrate
22 or with a person authorized by the magistrate or judge to receive
23 a deposit of bail, is guilty of a misdemeanor.

24 If, after an arrested person has signed and received a copy of a
25 notice to appear, the arresting officer or other officer of the issuing
26 agency, determines that, in the interest of justice, the citation or
27 notice should be dismissed, the arresting agency may recommend,
28 in writing, to the magistrate or judge that the case be dismissed.
29 The recommendation shall cite the reasons for the
30 recommendation and be filed with the court.

31 If the magistrate or judge makes a finding that there are grounds
32 for dismissal, the finding shall be entered on the record and the
33 infraction or misdemeanor dismissed.

34 Under no circumstances shall a personal relationship with any
35 officer, public official, or law enforcement agency be grounds for
36 dismissal.

37 (e) (1) A person contesting a charge by claiming under penalty
38 of perjury not to be the person issued the notice to appear may
39 choose to submit a right thumbprint, or a left thumbprint if the
40 person has a missing or disfigured right thumb, to the issuing court

1 through his or her local law enforcement agency for comparison
2 with the one placed on the notice to appear. A local law
3 enforcement agency providing this service may charge the
4 requester no more than the actual costs. *The issuing court may refer*
5 *the thumbprint submitted and the notice to appear to the*
6 *prosecuting attorney for comparison of the thumbprints.* When
7 there is no thumbprint or fingerprint on the notice to appear, or
8 when the comparison of thumbprints is inconclusive, the court
9 shall refer the notice to appear or copy thereof back to the issuing
10 agency for further investigation, unless the court determines that
11 referral is not in the interest of justice.

12 (2) Upon initiation of the investigation *or comparison* process
13 *by referral of the court*, the court shall continue the case and the
14 speedy trial period shall be tolled for 45 days.

15 (3) Upon receipt of the issuing agency's *or prosecuting*
16 *attorney's* response, the court may make a finding of factual
17 innocence pursuant to Section 530.6 of the Penal Code if the court
18 determines that there is insufficient evidence that the person cited
19 is the person charged and shall immediately notify the Department
20 of Motor Vehicles of its determination. If the Department of Motor
21 Vehicles determines the citation or citations in question formed the
22 basis of a suspension or revocation of the person's driving
23 privilege, the department shall immediately set aside the action.

24 (4) If the *prosecuting attorney or* issuing agency fails to
25 respond *to a court referral* within 45 days, the court shall make a
26 finding of factual innocence pursuant to Section 530.6 of the Penal
27 Code, unless the court determines that a finding of factual
28 innocence is not in the interest of justice.

29 (5) The citation or notice to appear may be held *by the*
30 *prosecuting attorney or issuing agency* for future adjudication
31 should the arrestee who received the citation or notice to appear be
32 found.

33 SEC. 8. Section 40504 of the Vehicle Code is amended to
34 read:

35 40504. (a) The officer shall deliver one copy of the notice to
36 appear to the arrested person and the arrested person in order to
37 secure release must give his or her written promise to appear in
38 court or before a person authorized to receive a deposit of bail by
39 signing two copies of the notice which shall be retained by the
40 officer, and the officer may require the arrested person, if this

1 person has no satisfactory identification, to place a right
2 thumbprint, or a left thumbprint or fingerprint if the person has a
3 missing or disfigured right thumb, on the notice to appear.
4 Thereupon, the arresting officer shall forthwith release the person
5 arrested from custody. Except for law enforcement purposes
6 relating to the identity of the arrestee, no person or entity may sell,
7 give away, allow the distribution of, include in a database, or create
8 a database with, this print.

9 (b) Any person who signs a written promise to appear with a
10 false or fictitious name is guilty of a misdemeanor regardless of the
11 disposition of the charge upon which he or she was originally
12 arrested.

13 (c) (1) A person contesting a charge by claiming under penalty
14 of perjury not to be the person issued the notice to appear may
15 choose to submit a right thumbprint, or a left thumbprint if the
16 person has a missing or disfigured right thumb, to the issuing court
17 through his or her local law enforcement agency for comparison
18 with the one placed on the notice to appear. A local law
19 enforcement agency providing this service may charge the
20 requester no more than the actual costs. *The issuing court may refer*
21 *the thumbprint submitted and the notice to appear to the*
22 *prosecuting attorney for comparison of the thumbprints.* When
23 there is no thumbprint or fingerprint on the notice to appear, or
24 when the comparison of thumbprints is inconclusive, the court
25 shall refer the notice to appear or copy thereof back to the issuing
26 agency for further investigation, unless the court finds that referral
27 is not in the interest of justice.

28 (2) Upon initiation of the investigation *or comparison* process
29 *by referral of the court*, the court shall continue the case and the
30 speedy trial period shall be tolled for 45 days.

31 (3) Upon receipt of the issuing agency's *or prosecuting*
32 *attorney's* response, the court may make a finding of factual
33 innocence pursuant to Section 530.6 of the Penal Code if the court
34 determines that there is insufficient evidence that the person cited
35 is the person charged and shall immediately notify the Department
36 of Motor Vehicles of its determination. If the Department of Motor
37 Vehicles determines the citation or citations in question formed the
38 basis of a suspension or revocation of the person's driving
39 privilege, the department shall immediately set aside the action.

1 (4) If the *prosecuting attorney or* issuing agency fails to
2 respond *to a court referral* within 45 days, the court shall make a
3 finding of factual innocence pursuant to Section 530.6 of the Penal
4 Code, unless the court finds that a finding of factual innocence is
5 not in the interest of justice.

6 (5) The citation or notice to appear may be held *by the*
7 *prosecuting attorney or issuing agency* for future adjudication
8 should the arrestee who received the citation or notice to appear be
9 found.

10 SEC. 9. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution for
12 certain costs that may be incurred by a local agency or school
13 district because in that regard this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.

19 SEC. 10. No reimbursement is required by this act pursuant
20 to Section 6 of Article XIII B of the California Constitution for the
21 other mandates in this bill because a local agency or school district
22 has the authority to levy service charges, fees, or assessments
23 sufficient to pay for the program or level of service mandated by
24 this act, within the meaning of Section 17556 of the Government
25 Code.

